

AMENDED IN ASSEMBLY APRIL 12, 2004  
AMENDED IN ASSEMBLY MARCH 22, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 2193**

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**Introduced by Assembly Member Nation**

February 18, 2004

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An act to amend Sections 22706 and 22708 of the Business and Professions Code, relating to tanning facilities.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as amended, Nation. Tanning facilities.

Existing law, the Filante Tanning Facility Act, provides for regulation of tanning facilities by the Department of Consumer Affairs, and requires a tanning facility to provide a written warning to customers and to post certain warning signs in the facility. Existing law makes a first violation of the act an infraction, and subsequent violations a misdemeanor.

~~This bill would authorize the Attorney General, any district attorney, or city attorney of a city with a population in excess of 750,000, or a city prosecutor to bring an action for violation of the act. The bill would also authorize any person to bring a civil action in the public interest for a violation of the act, if specified requirements are met.~~

~~The~~

*This* bill would make a tanning facility that violates certain provisions of the act liable for a civil penalty not to exceed \$2,500 per day for each violation.

Existing law requires a person between 14 and 18 years of age to give a tanning facility a consent statement signed by the person's parent or legal guardian before he or she may use a tanning device, and requires a person less than 14 years of age to be accompanied by his or her parent or guardian.

This bill would instead prohibit a person less than 18 years of age from using a tanning device except upon prescription by a physician and surgeon for treatment of a medical condition.

By expanding the scope of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares the  
2 following:

3 (a) The United States Food and Drug Administration (FDA)  
4 and numerous leading United States health care organizations  
5 estimate that approximately one million Americans each year will  
6 be stricken with skin cancer, a potentially deadly disease, and the  
7 most common of all types of cancers.

8 (b) Melanoma is more common than any nonskin cancer  
9 among women between 25 and 29 years old, and as of 2003, one  
10 in 70 Californians has a lifetime risk of developing melanoma.  
11 Nationally, one person dies of melanoma every hour.

12 (c) The FDA, joined by numerous leading United States and  
13 international health care organizations, discourages the use of  
14 tanning beds and sunlamps, and has concluded that indoor tanning  
15 can be as harmful as outdoor tanning, and that perhaps more than  
16 one million people in the United States alone visit tanning salons  
17 each day on the average.

18 (d) The FDA and numerous leading United States and  
19 international health care organizations have expressed concerns



1 that the consuming public generally does not know that indoor  
2 tanning devices, such as tanning beds and sunlamps, emit  
3 ultraviolet radiation, UVA and UVB, that is similar to and  
4 sometimes more powerful than the UV radiation emitted by the  
5 sun.

6 (e) The leading cause of skin cancers in California, including  
7 basal cell and squamous cell carcinomas and melanoma, is  
8 excessive exposure to UVA and UVB rays from both natural and  
9 artificial sources. The FDA has concluded that there are no “safe  
10 rays” insofar as both types of ultraviolet light cause skin cancer,  
11 damage to the eyes and the immune system, as well as wrinkling  
12 and other signs of premature skin aging.

13 (f) Tanning devices in salons, tanning parlors, spas, and similar  
14 settings that emit mostly UVA light are in no way less harmful  
15 alternatives to the sun’s rays, insofar as UVA rays penetrate deeper  
16 than UVB rays, causing damage to the underlying connective  
17 tissue as well as to the skin’s surface.

18 (g) Since there is currently no repair treatment available for  
19 reversing the brutal effects of UVA and UVB rays on the skin,  
20 effecting basic, minimally intrusive, public education to prevent  
21 such damage before it occurs is the best approach to maintaining  
22 the public health of the citizens of this state.

23 (h) It is in the public interest to exercise the state’s public  
24 education capabilities to warn the public of the risks of UVA  
25 radiation exposure by skin tanning units or devices, to endorse the  
26 findings released by the FDA warning Americans that the use of  
27 UVA tanning booths and sun beds pose potentially significant  
28 health risks to users, and to adopt legislation regarding UVA  
29 exposure to ensure the posting of warnings of these risks in  
30 commercial tanning salons, parlors, and spas.

31 SEC. 2. Section 22706 of the Business and Professions Code  
32 is amended to read:

33 22706. (a) A tanning facility shall:

34 (1) Have an operator present during operating hours who is  
35 sufficiently knowledgeable in the correct operation of the tanning  
36 devices used at the facility so that he or she is able to inform and  
37 assist each customer in the proper use of the tanning devices.

38 (2) Before each use of a tanning device, provide each customer  
39 with properly sanitized protective eyewear that protects the eye  
40 from ultraviolet radiation and allows adequate vision to maintain

1 balance; and not allow a person to use a tanning device if that  
2 person does not use the protective eyewear.

3 (3) Show each customer how to use suitable physical aids, such  
4 as handrails and markings on the floor, to maintain proper  
5 exposure distance as recommended by the manufacturer.

6 (4) Use a timer that has an accuracy of plus or minus 10 percent  
7 of any selected timer interval.

8 (5) Limit each customer to the maximum exposure time as  
9 recommended by the manufacturer.

10 (6) Control the interior temperature of a tanning facility so that  
11 it does not exceed 100 degrees F.

12 (b) (1) Every person who uses a tanning facility shall sign a  
13 written statement acknowledging that he or she has read and  
14 understood the warnings before using the device; and agrees to use  
15 the protective eyewear that the tanning facility provides. The  
16 statement of acknowledgment shall be retained by the tanning  
17 facility until the end of the calendar year at which time each person  
18 who is a current customer of the facility shall be required to renew  
19 that acknowledgment.

20 (2) Whenever using a tanning device a person shall use the  
21 protective eyewear that the tanning facility provides.

22 (3) A person less than 18 years of age may not use a tanning  
23 device at a tanning facility except upon written prescription by a  
24 physician and surgeon to treat a medical condition.

25 SEC. 3. Section 22708 of the Business and Professions Code  
26 is amended to read:

27 22708. (a) A first violation of this chapter is an infraction.  
28 Each day a first violation continues constitutes a separate  
29 infraction.

30 (b) Any violation of this chapter subsequent to a first violation  
31 is a misdemeanor. Each day a subsequent violation continues  
32 constitutes a separate misdemeanor.

33 (c) (1) A tanning facility that has violated Section 22705 or  
34 subdivision (b) of Section 22706 shall be liable for a civil penalty  
35 not to exceed two thousand five hundred dollars (\$2,500) per day  
36 for each violation in addition to any other penalty established by  
37 law. That civil penalty may be assessed and recovered in a civil  
38 action brought in any court of competent jurisdiction.

39 ~~(2) In assessing the amount of a civil penalty for a violation of~~  
40 ~~this chapter, the court shall consider all of the following:~~

1 ~~(A) The nature and extent of the violation.~~

2 ~~(B) The number of, and severity of, the violations.~~

3 ~~(C) The economic effect of the penalty on the violator.~~

4 ~~(D) Whether the violator took good faith measures to comply~~  
5 ~~with this chapter and the time these measures were taken.~~

6 ~~(E) The willfulness of the violator's misconduct.~~

7 ~~(F) The deterrent effect that the imposition of the penalty~~  
8 ~~would have on both the violator and the regulated community as~~  
9 ~~a whole.~~

10 ~~(G) Any other factor that justice may require.~~

11 ~~(d) Actions pursuant to this section may be brought by the~~  
12 ~~Attorney General in the name of the people of the State of~~  
13 ~~California, by any district attorney, by any city attorney of a city~~  
14 ~~having a population in excess of 750,000, or, with the consent of~~  
15 ~~the district attorney, by a city prosecutor in any city or city and~~  
16 ~~county having a full-time city prosecutor, or as provided in~~  
17 ~~subdivision (e).~~

18 ~~(e) Civil actions pursuant to this section may be brought by any~~  
19 ~~person in the public interest if both of the following requirements~~  
20 ~~are met:~~

21 ~~(1) The private action is commenced more than 60 days from~~  
22 ~~the date that the person has given notice of an alleged violation of~~  
23 ~~Section 22705 or subdivision (b) of Section 22706 that is the~~  
24 ~~subject of the private action to the Attorney General and the district~~  
25 ~~attorney, city attorney, or prosecutor in whose jurisdiction the~~  
26 ~~violation is alleged to have occurred, and to the alleged violator.~~  
27 ~~If the notice alleges a violation of Section 22705 or subdivision (b)~~  
28 ~~of Section 22706, the notice of the alleged violation shall include~~  
29 ~~a certificate of merit executed by the attorney for the noticing~~  
30 ~~party, or by the noticing party if the noticing party is not~~  
31 ~~represented by an attorney. The certificate of merit shall state that~~  
32 ~~the person executing the certificate has consulted with one or more~~  
33 ~~persons with relevant and appropriate experience or expertise who~~  
34 ~~has reviewed facts, studies, or other data regarding the~~  
35 ~~requirements of Section 22705 or subdivision (b) of Section 22706~~  
36 ~~that is the subject of the action, and that, based on that information,~~  
37 ~~the person executing the certificate believes there is a reasonable~~  
38 ~~and meritorious case for the private action. Factual information~~  
39 ~~sufficient to establish the basis of the certificate of merit, including~~  
40 ~~the information identified in paragraph (2) of subdivision (h), shall~~

1 be attached to the certificate of merit that is served on the Attorney  
2 General.

3 (2) Neither the Attorney General, a district attorney, a city  
4 attorney, nor other prosecutor has commenced and is diligently  
5 prosecuting a civil action against the violation.

6 (f) A person bringing an action in the public interest pursuant  
7 to subdivision (e), and a person filing any action in which a  
8 violation of this chapter is alleged, shall notify the Attorney  
9 General that the action has been filed.

10 (g) (1) A person filing an action in the public interest pursuant  
11 to subdivision (e), a private person filing any action in which a  
12 violation of this chapter is alleged, or a private person settling any  
13 violation of this chapter alleged in a notice given pursuant to  
14 paragraph (1) of subdivision (e), shall, after the action or violation  
15 is subject either to a settlement or to a judgment, submit to the  
16 Attorney General a reporting form that includes the results of that  
17 settlement or judgment and the final disposition of the case, even  
18 if dismissed. At the time of the filing of any judgment pursuant to  
19 an action brought in the public interest pursuant to subdivision (e),  
20 or any action brought by a private person in which a violation of  
21 this chapter is alleged, the plaintiff shall file an affidavit verifying  
22 that the report required by this subdivision has been accurately  
23 completed and submitted to the Attorney General.

24 (2) A person bringing an action in the public interest pursuant  
25 to subdivision (e), or a private person bringing an action in which  
26 a violation of this chapter is alleged, shall, after the action is either  
27 subject to a settlement, with or without court approval, or to a  
28 judgment, submit to the Attorney General a report that includes  
29 information on any corrective action being taken as a part of the  
30 settlement or resolution of the action.

31 (3) The Attorney General shall develop a reporting form that  
32 specifies the information that shall be reported, including, but not  
33 limited to, for purposes of subdivision (e), the date the action was  
34 filed, the nature of the relief sought, and for purposes of this  
35 subdivision, the amount of the settlement or civil penalty assessed,  
36 other financial terms of the settlement, and any other information  
37 the Attorney General deems appropriate.

38 (4) If there is a settlement of an action brought by a person in  
39 the public interest under subdivision (e), the plaintiff shall submit  
40 the settlement, other than a voluntary dismissal in which no

1 consideration is received from the defendant, to the court for  
2 approval upon noticed motion, and the court may approve the  
3 settlement only if the court makes all of the following findings:

4 (A) The warning that is required by the settlement complies  
5 with this chapter.

6 (B) The award of attorney's fees is reasonable under California  
7 law.

8 (C) The penalty amount is reasonable based on the criteria set  
9 forth in paragraph (2) of subdivision (e).

10 (5) The plaintiff subject to paragraph (4) has the burden of  
11 producing evidence sufficient to sustain each required finding.  
12 The plaintiff shall serve the motion and all supporting papers on  
13 the Attorney General, who may appear and participate in the  
14 proceeding without intervening in the case.

15 (h) The Attorney General shall maintain a record of the  
16 information submitted pursuant to subdivisions (f) and (g) and  
17 shall make this information available to the public.

18 (i) (1) Except as provided in paragraph (2), the basis for the  
19 certificate of merit required by subdivision (e) is not discoverable.  
20 However, nothing in this subdivision shall preclude the discovery  
21 of information related to the certificate of merit if that information  
22 is relevant to the subject matter of the action and is otherwise  
23 discoverable, solely on the ground that it was used in support of the  
24 certificate of merit.

25 (2) Upon the conclusion of an action brought pursuant to  
26 subdivision (e) with respect to any defendant, if the trial court  
27 determines that there was no actual violation of Section 22705 or  
28 subdivision (b) of Section 22706, the court may, upon the motion  
29 of that alleged violator or upon the court's own motion, review the  
30 basis for the belief of the person executing the certificate of merit,  
31 expressed in the certificate of merit, that a violation of Section  
32 22705 or subdivision (b) of Section 22706 had occurred. The  
33 information in the certificate of merit, including the identity of the  
34 persons consulted with and relied on by the certifier, and the facts,  
35 studies, or other data reviewed by those persons, shall be disclosed  
36 to the court in an in-camera proceeding at which the moving party  
37 shall not be present. If the court finds that there was no credible  
38 factual basis for the certifier's belief that a violation of Section  
39 22705 or subdivision (b) of Section 22706 had occurred, then the  
40 action shall be deemed frivolous within the meaning of Section



1 ~~128.6 or Section 128.7 of the Code of Civil Procedure, whichever~~  
2 ~~provision is applicable to the action. The court shall not find a~~  
3 ~~factual basis credible on the basis of a legal theory of liability that~~  
4 ~~is frivolous within the meaning of Section 128.6 or Section 128.7~~  
5 ~~of the Code of Civil Procedure, whichever provision is applicable~~  
6 ~~to the action.~~

7 ~~(j) The Attorney General may provide the factual information~~  
8 ~~submitted to establish the basis of the certificate of merit on~~  
9 ~~request to any district attorney, city attorney, or prosecutor within~~  
10 ~~whose jurisdiction the violation is alleged to have occurred, or to~~  
11 ~~any other state or federal government agency, but in all other~~  
12 ~~respects the Attorney General shall maintain, and ensure that all~~  
13 ~~recipients maintain, the submitted information as confidential~~  
14 ~~official information to the full extent authorized in Section 1040~~  
15 ~~of the Evidence Code.~~

16 ~~(k) In any action brought by the Attorney General, a district~~  
17 ~~attorney, a city attorney, or a prosecutor pursuant to this chapter,~~  
18 ~~the Attorney General, district attorney, city attorney, or prosecutor~~  
19 ~~may seek and recover costs and attorney's fees on behalf of any~~  
20 ~~party who provides a notice pursuant to paragraph (1) of~~  
21 ~~subdivision (e) and who renders assistance in that action. law.~~

22 SEC. 4. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of  
28 the Government Code, or changes the definition of a crime within  
29 the meaning of Section 6 of Article XIII B of the California  
30 Constitution.